**CONVERTIBLE SHARED APPRECIATION NOTE**

# $ , 20

**THIS NOTE** (the “Note”) is given on

, 20

by and between

a limited liability company whose address is (hereinafter referred to as **“Borrower” or “Company”**) and **,** whose address is (hereinafter referred to as the **“Lender”**).

1. **Borrower’s Promise to Pay**. Unless this Note was converted by the Lender into Company membership interests as provided for in Section 4, upon any disposition of all or any part of the Property or any beneficial interest in the Property (the “Maturity Event”), the Borrower hereby promises to pay to the order of the Lender principal in the amount of ($ ) and percent ( %) of the appreciation of the Property with appreciation being equivalent to the appraised value at the time of the Maturity Event less Capital Improvements (as defined below) less the appraised value of the Property as of the date of this Agreement which the parties agree is ($ ), less allowable settlement costs. Allowable settlement costs consist of the following:

* real estate sales commission consistent with the prevailing rate but not to exceed

percent ( %) of the contract sales price;

* local/state transfer tax stamps and other closing costs customarily paid by the seller and
* other actual, customary closing costs customarily paid by the seller not to exceed

percent ( %) of the contract sales price.

1. **Interest**. This Note shall not bear interest unless the principal amount due upon occurrence of a Maturity Event is not paid to Lender. If principal amount due is not paid, the principal sum due pursuant Paragraph 1 of this Note shall bear interest from the date of the Maturity Event at the prime rate as published in the “Money Rates” column of *The Wall Street Journal* on the date of the Maturity Event.
2. **Security for Payment**: This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Lender under this Note, if the Lender does not convert this Note as provided in Section 4, Borrower shall provide Lender a Mortgage, Deed

of Trust or Security Deed (the “**Security Instrument**”), to be dated 30 days after the Company

acquires the real property located at

(the “**Property**”). The Security

Instrument shall cover the Property. The security protects the Lender from possible losses which might result if Company does not keep the promises made in this Note.

1. **Converted Note**: The Lender may at three (3), but not to exceed twenty nine (29) days of the Company acquiring the Property, convert this note into a percent ( %) membership interest in the Company (the “**Conversion**”). Such Conversion shall be effected by

the surrender of this Note to the Company, at

**Date**”).

, (the “**Conversion**

* 1. Duties of Lender at Conversion. At Conversion, the Lender shall deliver to the Company the following:
     1. An executed subscription agreement pertaining to the Lender’s Membership Interest.
     2. An executed adherence agreement whereby the Lender documents its agreement to comply with and to be bound to the terms of the Operating Agreement as if the Lender had been an initial Member of the Company.
     3. If the Lender is a business entity, a copy of duly adopted resolution authorizing Lender to acquire the Lender’s Membership Interest in accordance with this Agreement.
  2. Duties of Company at Conversion. At Conversion, the Company shall deliver to the Lender a Unit Certificate that represents the Lender’s Membership Interest in the Company.
  3. Effect of Conversion. Such Conversion shall be deemed to have been effected as of the close of business on the Conversion Date, and at such time, the rights of the Lender with respect to the Principal Amount and this Note shall cease and the Lender shall be deemed to have become a Member of the Company as of the date of this Note. The Company shall treat the Principal Amount as the Lender’s initial capital contribution to the Company.
  4. No Right to be Manager. Lender acknowledges and agrees that Lender is not entitled to and will not become a manager of the Company upon the acquisition of the Lender’s Membership Interest. If Lender should become a manager of the Company after the Closing such appointment will be made in accordance with the terms of the Operating Agreement.
  5. Voting. Nothing contained in this Note shall be construed as conferring upon the Lender the right to vote or to consent or to receive notice as a member in the

Company until the Conversion.

1. **Capital Improvements**. percent ( %) of the cumulative sum expended by the Borrower on completed capital improvement projects that significantly changed and enhanced the value of the Property (not inclusive of sweat equity) as of the date herein until the occurrence of a Maturity Event in which the cumulative amount expended for each type of improvement project is in excess of dollars ($ ) and provided such amounts expended are supported by contractor invoices and/or receipts shall be referred to herein as “Capital Improvements.”
2. **Appraisal**. Upon the occurrence of a Maturity Event or a notice of default provided to the Borrower by the Lender, Lender shall obtain an independent appraisal of the Property for the purpose of determining the principal amount required to satisfy this Note for the purpose of acceleration and foreclosure.

# Payment.

1. No regular monthly payments are due under this Note. A payment is due upon the occurrence of a Maturity Event pursuant to the terms and schedule provided in Paragraph 1 of this Note.

This Note is a deferred contingent liability. Principal and any interest on this Note and all other sums, which may or shall become due under this Note and the Security Instrument, shall be due and payable upon the occurrence of the Maturity Event (Maturity Date) if (1) not otherwise satisfied in accordance with the provisions of the Security Instrument, or (2) there is an Event of Default (defined below).

1. Payment shall be made at , or at such place as Lender may designate in writing by notice to Borrower.
2. **Prepayment**. Borrower shall not have the right to prepay this Note, in whole or in part.
3. **Default**. The term “Event of Default” shall mean the violation of any term of this Note or the Security Instrument. The terms of the Security Instrument are incorporated herein by reference as though set forth herein.
4. **Acceleration**. Upon the occurrence of any Event of Default, Lender may declare, without notice, the principal and interest on this Note, together with all other sums which may or shall become due under this Note and the Security Instrument, immediately due and payable.

In the event the Lender provides the Borrower with a notice of default, the Lender shall order an independent appraisal of the Property for the purpose of determining the principal amount required to satisfy this Note upon acceleration (the “Acceleration Appraisal”). The principal amount due shall be equivalent to the difference between the Acceleration Appraisal and the

appraised value on the Date of Insurance.

1. **Payment of Lender’s Costs and Expenses**. If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney’s fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at a rate of the current value of funds rate as published in the “Money Rates” column of *The Wall Street Journal*, on the date of the date of disbursement, and, at the option of Lender, shall be immediately due and payable.
2. **Modifications**. This Note shall not be modified, amended, changed, discharged, or terminated orally. This Note may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.
3. **Cumulative Rights**. No delay on the part of Lender or other holder of this Note in the exercise of any power or right under this Note, under the Security Instrument, or under any other Loan Document, shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by Lender or other holder of this Note of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it.
4. **Attorneys' Fees and Costs**. If this Note is not paid when due and the same is placed in the hands of an attorney for collection, or if this Note is collected by suit or through bankruptcy, probate or other proceedings, Borrower agrees to pay the reasonable attorneys' fees of the holder of this Note, together with all actual expenses of collection and litigation and costs of court incurred by the holder of this Note.
5. **Notices.** Any notice to Borrower provided for in this Note shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
6. **Time of the Essence**. Time is of the essence as to all dates set forth herein.
7. **Waivers**. Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this Note.
8. **Successors and Assigns Bound**. The covenants and agreements of this Note shall bind and benefit the successors and assigns of Lender and Borrower. The covenants and agreements of Borrower under this Note are not assignable without the prior written consent of Lender.
9. **Severability**. In case any of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
10. **GOVERNING LAW**. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN

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1. **JURISDICTION AND VENUE**. ALL ACTS CONTEMPLATED BY THIS NOTE SHALL BE PERFORMABLE IN COUNTY, , AND ALL SUMS PAYABLE UNDER THIS NOTE SHALL BE PAYABLE IN

COUNTY, . BORROWER HEREBY CONFIRMS AND AGREES THAT ALL LEGAL ACTIONS INVOLVING THE VALIDITY OR ENFORCEMENT OF THIS NOTE SHALL HAVE JURISDICTION AND VENUE IN COUNTY, .

1. **Headings**. The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof.
2. **Authority to Execute**. The representative of Borrower executing this Note represents that he/she has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.
3. **FINAL AGREEMENT**. THIS NOTE AND ANY OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THE DISBURSEMENT OF FUNDS EVIDENCED BY THIS NOTE, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BY SIGNING BELOW, Borrower accepts and agrees under seal to the terms and covenants contained in this Note.

# Borrower:

**, a**

By: \_

, its

Borrower Acknowledgment

State of ) County of )

On the day of in the year \_ before me

Then personally appeared before me , the duly authorized

of , and acknowledged the foregoing instrument by him so executed to be his free act and deed in his said capacity and the free act and deed of such .

Notary Public

Printed Name

My commission expires: